

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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MARTIN HALPRIN,

Plaintiff,

v.

LAKESIDE INN, INC.; et al.,

Defendants.

3:13-cv-0220-LRH-WGC

ORDER

Before the Court is Plaintiff Martin Halprin's ("Halprin") Motion in Limine to Exclude the Testimony of Natalia Popovich ("Popovich"). Doc. #46.<sup>1</sup> Defendant Lakeside Inn, Inc. ("Lakeside Inn") filed an Opposition. Doc. #52.

Halprin is a former employee of Lakeside Inn, and was employed as a race and sports book writer from October 12, 2009, until November 9, 2011. Halprin alleges that he has a disability that requires him to sit for extended periods of time. To accommodate his disability during his employment, Halprin brought his own personal chair into the sports book employee area and left it there for his personal use.

On November 6, 2011, Halprin arrived for his weekend shift and found Popovich, another sports book employee, sitting in his chair. Halprin and Popovich then engaged in a disagreement about Popovich's use of the chair, which escalated into an argument in front of Lakeside Inn guests and other sports book employees. Robert Morell ("Morell"), the on-duty supervisor, sent both Halprin and Popovich home for the remainder of the day for behaving inappropriately in front of

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<sup>1</sup> Refers to the Court's docket number.

1 guests. Morell then wrote corrective counseling memorandums for both employees memorializing  
2 the incident and discipline.

3 Halprin had the next two days off. During his time off, he contacted Morell inquiring into  
4 what action would be required to make sure that his chair was made available to him during  
5 working hours. Morell instructed Halprin to bring a doctor's note of his disability for his  
6 employment records. This instruction was added to Halprin's corrective counseling memorandum.  
7 See Doc. #18, Ex. 7 ("[B]ring in a doctor note stating his condition, so we will make sure a chair is  
8 available.").

9 On November 9, 2011, Halprin returned to work with a doctor's note stating that he could  
10 not stand for prolonged periods of time. At the beginning of his shift, Halprin presented the note to  
11 supervisor John Dominguez ("Dominguez"), the on-duty supervisor for the day. Dominguez  
12 allegedly informed Halprin that he could not take the doctor's note, and that the note had to be  
13 delivered to Lakeside Inn's Human Resources department. However, before he could deliver the  
14 note, Dominguez stated that they had to discuss the November 6, 2011, incident and that Halprin  
15 had to remove his chair from Lakeside Inn property. Halprin then left work, allegedly to remove  
16 the chair, and contacted Sheila Aquilina ("Aquilina"), Lakeside Inn's Human Resources department  
17 manager, to set up an appointment to discuss his disability and employment. Later that day,  
18 Halprin met with both Aquilina and Dominguez. At the meeting Halprin was allegedly informed  
19 that Aquilina and Dominguez wanted to discuss the November 6, 2011, incident and his leaving  
20 work early, rather than his disability, at which point he got up from the meeting and walked out.  
21 Halprin was subsequently terminated by Lakeside Inn.

22 On March 29, 2013, Halprin filed a Complaint against Lakeside Inn alleging two causes of  
23 action: (1) disability discrimination under the Americans with Disabilities Act ("ADA"); and  
24 (2) retaliation. Doc. #1, Ex. A. On June 17, 2014, the Court held that Halprin was not subject to an  
25 adverse employment action because of his disability based on the November 6, 2011, incident, but  
26 that there were disputed issues of material fact regarding the November 9, 2011, incidents. Doc.

1 #27 at 5. Here, Halprin argues that because the Court ruled that Popovich's actions on November  
2 6, 2011, did not constitute discrimination, Popovich's testimony is not relevant to Plaintiff's claims  
3 or Defendant's defenses. Doc. #46 at 3.

4 Evidence is relevant and admissible if "it has any tendency to make a fact more or less  
5 probable than it would be without the evidence," and "the fact is of consequence in determining the  
6 action." Fed. R. Evid. 401. "Irrelevant evidence is not admissible." Fed. R. Evid. 402. The Court  
7 can "exclude relevant evidence if its probative value is substantially outweighed by a danger of . . .  
8 unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly  
9 presenting cumulative evidence." Fed. R. Evid. 403. Evidence is overly prejudicial if it "appeals  
10 to the jury's sympathies, arouses its sense of horror, provokes its instincts to punish, or triggers  
11 other mainsprings of human emotion." *United States v. Blackstone*, 56 F.3d 1143, 1146 (9th Cir.  
12 1995).

13 The Court does not believe that Popovich's testimony warrants exclusion at this time. The  
14 November 6, 2011, incident appears to have a rational relationship to Halprin's subsequent  
15 conversations with Aquilina and Dominguez, and his ultimate termination or constructive  
16 discharge. Popovich's testimony regarding the incident is likely relevant to provide the Jury with  
17 an understanding of what happened, how Halprin responded to the confrontation with Popovich,  
18 and what Halprin perceived to be the reason for his termination or constructive discharge.  
19 Accordingly, the Court denies Halprin's Motion in Limine to Exclude the Testimony of Natalia  
20 Popovich without prejudice.

21 IT IS THEREFORE ORDERED that Halprin's Motion in Limine to Exclude the Testimony  
22 of Natalia Popovich (Doc. #46) is DENIED without prejudice.

23 IT IS SO ORDERED.

24 DATED this 11th day of May, 2015.

25   
26 LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE